HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 2161 OF 2006

DATED: 20.2.2007

Between:

M/s.Smith and Kenner Pharmaceuticals Private Limited

.Petitioner

and

State Bank of India, represented by its General Manager and another

…Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.2161 OF 2006

ORAL ORDER:

The petitioner is a private limited company. It borrowed money from the 1st respondent and defaulted. The 2nd respondent a securitisation Company, regulated under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002 (for short "the Act"), was issued a certificate of registration as provided in Sec.4 of the Act. Under an agreement the 1st respondent has transferred/conveyed its financial assets as envisaged in Sec.5 of the Act to the 2nd respondent. The 2nd respondent has initiated proceedings against the petitioner under the provisions of the Act for recovery of the liabilities due under the secured assets. Aggrieved by the transfer of the secured assets by the 1st respondent to the 2nd respondent, the petitioner filed W.P.No.13943 of 2005 challenging the transfer of securities. In the writ petition, the 1st respondent is stated to have filed a counter-affidavit to the effect that under an agreement dated 30-03-2005, the 1st respondent had transferred the securities of the petitioner to it. Alleging that the 1st respondent had transferred the secured assets of a very high value to the 2nd respondent for a very meagre amount including the securities furnished by the petitioner and that as a result of such irrational transfer the 1st respondent is put to severe economic deprivation and the 2nd

respondent is enabled unmerited profits, the petitioner seeks disclosure of the agreement entered into between respondent Nos.1 and 2 whereunder the securities of the petitioner-Company were transferred to the 2nd respondent. The disclosure is sought under the provisions of the Right to Information Act,2005 (the 2005 Act).

The respondents 1 and 2 resist the claim of the petitioner to disclosure of the information sought in this writ petition.

The 2005 Act is a legislative measure for ensuring a regime of right to information for citizens to secure access to information under the control of public authorities, with a view to promote transparency and accountability in the working of the public authorities. The provisions of the 2005 Act are engineered to achieve these purposes.

The provisions of the 2005 Act are divided into six (vi) chapters. Chapter II sets out provisions defining the contours of the right conferred under the provisions of the Act; the obligations of public authorities; the designation of the executors of the statutory provisions such as Public Information Officers, the provisions relating to effectuation of the right to obtain information; the disposal of the requests made; provisions specifying the areas excluded from the legislative obligation to disclose information; provisions relating to the grounds on which rejection to access to information in specified cases may be made and other incidental, miscellaneous and house keeping provisions. Sec.3 provides that subject to the provisions of the Act, all citizens shall have the right to information. Neither in terms of the provisions of Part.II of the Constitution nor the provisions of the Citizenship Act, generically or otherwise, is it pleaded, claimed or urged that the petitioner, a private limited company is a citizen of this Republic.

It may be a juristic person but a citizen it is not. The right to information legislatively mandated in Sec.3 is a right conferred on the citizens and not on all persons.

Sec.6 of the 2005 Act sets out the procedures and processes for obtaining information mandated to be provided under the provisions of the Act. This Section provides that a person who desires to obtain any information under the Act shall make a request in writing in the manner provided, accompanied by such fee as may be prescribed by the designated authorities and specifying the information sought. There are other provisions in this section setting out the contours of what are required to be stated in an application for information.

Drawing upon the expression "person" employed in Sec.6 of the 2005 Act, the learned counsel for the petitioner would contend that as the expression "person" is not defined in the 2005 Act, its meaning must be ascertained from the provisions of the General Clauses Act,1897. The argument looks attractive at the first blush but must perish on closer scrutiny. Sec.6, to the extent relevant and material reads: "*a person, who desires to obtain any information under this Act*".

This provision is on its text and purpose, conditioned and integrally relatable to the right delineated in Sec.3. Sec.3 enacts that all the citizens shall have the right to information subject to the provisions of the Act. The expression "a person" in Sec.6 of the Act must therefore mean a person who is a citizen and no other. The question is not whether the expression "a person" could comprehend a wider class of humanity including under the provisions of the General Clauses Act. The question is, in the contextual setting in which the expression is used in the 2005 Act, does the expression "a person" mean what the

expression signifies in its generic component or does it have a specific meaning in the context of the provisions of the Act.

The unit of enquiry in any interpretive process is the statue read as a whole, not a provision, a word or a phrase. Sec.6 of the Act occurring in Chapter II sets out the modalities and requisites for obtaining information. It does not enact the right to information or the concomitant obligation of public authorities to furnish information under the Act. The appropriate statutory provision, which creates the right to information, is Sec.3 and Sec.3 enacts that a citizen shall have the right to information. On a holistic and interactive interpretation of the provisions of Secs.3 and 6, the conclusion is irresistible that it is only persons who are citizens have the right to information and only a citizen person may request for obtaining information under Sec.6. Any lingering doubt as to the true import of the provisions of Section.6, the Act is set at rest by the preambular statement which, states that the Act is provided for setting out a practical regime of right to information for citizens.(emphasis added)

The petitioner is not a citizen and does not claim to be one. It is not entitled to any rights under the 2005 Act. It is therefore not entitled to the relief sought in the writ petition.

There is another contention of the petitioner that merits consideration and analysis. According to the petitioner, there has been an unrealistic and economically imprudent agreement between the 1st and 2nd respondents with regard to the transfer of the secured assets and such an agreement tantamounts to an abdication of statutory responsibility and prudent commercial practices by the 1st respondent, adversely impacting public interest. Such an interest as is claimed by the petitioner is a diffuse interest of all citizens and tax payers of this Republic.

The petitioner does not have a singular claim to greater fidelity of accountability by the 1st respondent to it, as distinct from any other taxpayer or citizen. In any event, there are entrenched accountability provisions in the text and matrix of our constitutional scheme including legislative oversight of the 1st respondent's functioning, the 1st respondent being a statutory authority is accountable to the Parliament. There are also other oversight mechanisms including critical supervision by the Reserve Bank of India. These are generic structural fetters, which ensure that the commercial operations of the 1st respondent are efficiently managed. There is no need for the petitioner to audit the commercial functions of the 1st respondent in terms of public interest.

For the plurality of the reasons recorded above there are no merits in the writ petition.

The writ petition is accordingly dismissed. In the circumstances there shall be no order as to costs.

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GODA RAGHURAM,J

20th FEBRUARY,2007

***TSNR**